

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITAL ONE, NATIONAL ASSOCIATION,

Plaintiff,

-against-

201 W 134 ST LLC, GERALD MIGDOL a/k/a JERRY MIGDOL, and "JOHN AND/OR JANE DOE #1" to "JOHN AND/OR JANE DOE #5" inclusive, the last five named persons being unknown to plaintiff, the persons and parties intended being the tenants, occupants, persons, entities, or corporations, if any, having or claiming upon the premises at 201 West 134th Street a/k/a 2280 Adam Clayton Powell Jr. Boulevard, New York New York, a four-story, single dwelling building, as more fully described in the complaint,

**AFFIDAVIT OF
DEFENDANT GERALD
MIGDOL IN SUPPORT
OF DEFENDANTS'
MOTION TO DISMISS**

12 Civ. 5025 (JMF)
ECF Case

Defendants.

I, Gerald Migdol, swear under penalty of perjury that:

1. Everything that I swore to in my affidavit dated September 14, 2012 is true and is hereby repeated and herein incorporated into this affidavit, and the captioned terms defined therein are hereby incorporated herein.
2. In my September 14, 2012 affidavit, I made specific objections to the service of the complaint and Amended Complaint and I pointed out the matter in which the utilized service of process rules were not satisfied.
3. I have since received and reviewed the two separate Affidavits of Service of Ronald Guest sworn to on September 17, 2012 and September 19, 2012 respectively, both claiming that service was made upon Aaron Migdol on September 11, 2012; however, the affidavits of service are

clearly false because the description of Aaron Migdol in Ronald Guest's Affidavits of Service are severely inaccurate: Aaron Migdol, my son, has white skin, green eyes, is 30 years old and weighs approximately 165 pounds, while the affidavit of service describes Aaron Migdol as having dark brown skin, brown eyes, as 45-50 years old and weighing 230-240 pounds. This description does not fit the description of Aaron Migdol, nor does it fit the description of anyone who works in my office.

4. I was not served with the summons and complaint nor was I served with the Amended Complaint or any other summons in accordance with the Federal Rules of Civil Procedure or the New York Civil Practice Laws and Rules.

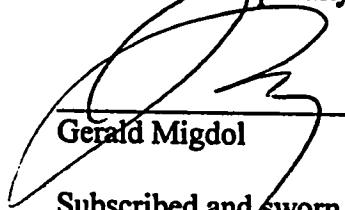
5. The tenant to whom I was renting the apartment at 201 West 134th Street New York, NY (the "Property") has vacated and I moved back into the Property, which is now my primary residence.

6. At the time that I obtained a loan from North Fork Bank, my intention was to make the Property my primary residence after renovating the Property, and this is what I did; I subsequently moved out with the intention to return and make the Property my primary residence, which is what I have done.

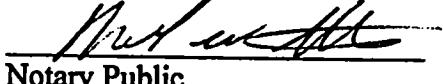
7. At the time that I obtained a loan from North Fork Bank, I owned the Property as the single member of the LLC because I wanted to limit my liability exposure as an owner, and North Fork Bank directed me to have the LLC borrow the money with me signing on the loan and to have me guaranty the loan personally, which made me, for all intents and purposes, the borrower on the loan with North Fork Bank. I obtained this loan for household purposes.

8. I object to the alleged mortgage and notes and the amounts that are alleged to be due.

I declare under penalty of perjury that the foregoing is true and correct.


Gerald Migdol

Subscribed and sworn to me this
4 day of October, 2012


Notary Public

Dated: October 4, 2012

RONALD W. CLARKE
Notary Public, State of New York
No. 24-4777791
Qualified in Kings County
Commission Expires December 4 2014